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14 WILLIAM J. HOFFMAN, Receiver

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

12 WILLIAM J. HOFFMAN, Court-
13 appointed permanent receiver for
14 Nationwide Automated Systems, Inc.,
15 Oasis Studio Rentals, LLC, Oasis Studio
16 Rentals #2, LLC, and Oasis Studio
17 Rentals #3, LLC, and their subsidiaries
18 and affiliates,

19 Plaintiff,

20 v.

21 HEATHER MARKOWITZ; JILL
22 MARKOWITZ; and DOES 1
23 THROUGH 10, inclusive,

24 Defendants.

Case No. 2:16-cv-1963

COMPLAINT FOR FRAUDULENT
TRANSFER

1 Plaintiff William J. Hoffman of Trigild, Inc. ("Receiver"), the Court-
2 appointed permanent receiver for Nationwide Automated Systems, Inc. ("NASI"),
3 Oasis Studio Rentals, LLC, Oasis Studio Rentals #2, LLC, Oasis Studio
4 Rentals #3, LLC, and their subsidiaries and affiliates ("Receivership Entities"),
5 hereby brings the following Complaint against the above-captioned Defendants and
6 alleges, on behalf of the Receivership Entities, as follows:

7 I. JURISDICTION AND VENUE

8 1. This Court has jurisdiction over this matter under 28 U.S.C.
9 sections 1345 and 1367(a), and the doctrines of ancillary and supplemental
10 jurisdiction, in that this action arises from a common nucleus of operative facts as,
11 and is substantially related to the original claims in, the Securities and Exchange
12 Commission ("Commission") enforcement action styled as *Securities and Exchange*
13 *Commission v. National Automated Systems, Inc., et al.*, United States District
14 Court, Central District of California, Case No. 14-CV-07249-SJO (FFMx) ("SEC
15 Action").

16 2. This Court may exercise personal jurisdiction over the above-captioned
17 Defendants pursuant to Federal Rule of Civil Procedure 4(k)(1)(A); and 28 U.S.C.
18 §§ 754 and 1692.

19 3. Venue in the Central District of California is proper under 28 U.S.C.
20 section 1391 because this action is an ancillary proceeding to the SEC Action and
21 because the Receiver was appointed in this District pursuant to the Preliminary
22 Injunction and Orders (1) Freezing Assets; (2) Prohibiting the Destruction of
23 Documents; (3) Requiring Accountings; and (4) Appointing a Receiver entered by
24 this Court in the SEC Action on October 29, 2014 ("Preliminary Injunction").

25 II. PARTIES

26 4. The Receiver is the duly appointed permanent receiver for the
27 Receivership Entities, and was appointed permanent receiver for the Receivership
28 Entities pursuant to the Preliminary Injunction. Among other things, the

1 Preliminary Injunction calls for the Receiver to recover and marshal, for the benefit
2 of creditors of and investors in the Receivership Entities, any and all assets which
3 were owned, leased, occupied, or otherwise controlled by the Receivership Entities
4 or were otherwise purchased with assets of the Receivership Entities. The Receiver
5 holds exclusive authority and control over the assets of the Receivership Entities,
6 including over the causes of action alleged herein, over which this Court has
7 ancillary and supplemental jurisdiction.

8 5. On information and belief, Heather Markowitz, is a citizen and resident
9 of the County of Nassau, New York, and is the recipient of assets of the
10 Receivership Entities as described further herein.

11 6. On information and belief, Jill Markowitz, is a citizen and resident of
12 the County of Nassau, New York, and is the recipient of assets of the Receivership
13 Entities as described further herein.

14 7. The Receiver is ignorant of the true names and capacities, whether
15 individual, corporate, associate or otherwise, of Does 1 through 10. The Receiver is
16 informed and believes, and based thereon alleges, that each fictitiously named
17 defendant is the recipient of fraudulently transferred funds from the Receivership
18 Entities, or was in some way responsible for, participated in or contributed to the
19 matters and things of which the Receiver complains herein, and in some fashion, has
20 legal responsibility therefor. When the exact nature and identity of such fictitious
21 defendants' responsibility for, participation in and contribution to the matters and
22 things herein alleged is ascertained, the Receiver will seek to amend this Complaint
23 and all proceedings herein to set forth the nature of these defendants' identity.

24 8. The Receiver is informed and believes, and based thereon alleges, that
25 Does 1 through 10, are principals, officers and/or agents of each of the other
26 Defendants, and directed, ratified, or caused the conduct and/or omissions alleged in
27 this Complaint. The Receiver is further informed, and on that basis alleges, that
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1 Does 1 through 10 are the alter egos of the other Defendants, and as such are liable
2 for the conduct and damages alleged against the other Defendants herein.

3 9. The Receiver is informed and believes, and based thereon alleges, that
4 the Defendants are, and at all times relevant herein were, the agents, principals,
5 partners, co-conspirators and/or co-venturers of each other, that each of them acted
6 within the course, scope and authority of said relationships, and that, as a result, are
7 jointly and severally liable for the acts alleged herein.

8 III. FACTUAL ALLEGATIONS

9 A. The Purported Business of the Receivership Entities and the 10 Commencement of the SEC Action

11 10. As alleged by the Commission in the SEC Action, NASI raised money
12 from investors by selling them Automated Teller Machines ("ATMs"), leasing the
13 ATMs back from investors, managing the ATMs for the investors, and paying the
14 investors "rents" that were guaranteed to total at least 20% of the purchase price
15 paid for the ATMs per year. The Receivership entities also paid referral fees to
16 investors and other agents who recruited new investors to purchase ATMs.

17 11. In actuality, the Receivership Entities did not sell any ATMs to
18 investors, but instead fabricated and sold fictitious ATMs with fabricated serial
19 numbers and locations. The "rents" paid to investors who purchased fictitious
20 ATMs, as well as referral fees paid to investors and agents, were paid from the
21 amounts raised from other investors. Thus, NASI operated a classic Ponzi scheme.

22 12. On or about September 17, 2014, the Commission initiated the SEC
23 Action against the Receivership Entities and their principals Joel Gillis and Edward
24 Wishner, alleging violations of federal securities laws. The Commission petitioned
25 for the Receiver's appointment, and on September 30, 2014, and October 29, 2014,
26 this Court entered orders appointing the Receiver, first on a temporary basis and
27 then as permanent receiver for the Receivership Entities.

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1 **B. The Receiver's Authority and Investigation Pursuant to His**
2 **Appointment**

3 13. Pursuant to the terms of his appointment, the Receiver is vested with
4 exclusive authority and control over the assets of the Receivership Entities.
5 Specifically, Article XII of the Preliminary Injunction and Article VIII of the Freeze
6 Order vests the Receiver with the "full powers of an equity receiver, including, but
7 not limited to . . . full power to sue . . . and take into possession all [receivership]
8 property." (Emphasis added.)

9 14. The Receiver's investigation to date supports and confirms the
10 Commissions allegations in the SEC Action, including that NASI operated a Ponzi
11 scheme, sold fictitious ATMs to investors and made rent and referral fee payments
12 to investors from funds raised from other investors. Defendants Gillis and Wishner
13 filed answers to the SEC's complaint in which they admit the facts supporting the
14 SEC's Ponzi scheme allegations.

15 **C. Criminal Indictment and Guilty Pleas**

16 15. On December 16, 2014, Gillis and Wishner were arrested and charged
17 with mail fraud, wire fraud, conspiracy, and aiding and abetting. *United States v.*
18 *Gillis, et al.*, C.D. Cal. Case No. 14-CR-00712-SJO. Gillis and Wishner waived
19 indictment, surrendered their passports, and were released on bail. On January 13,
20 2015, and January 21, 2015, respectively, Wishner and Gillis plead guilty to all four
21 counts of the criminal information. In connection with Gillis' guilty plea, a
22 statement of facts signed by Gillis that supports the guilty plea was filed by the
23 government ("Statement of Facts"). As part of his guilty plea, Gillis stated under
24 oath that the facts in the Statement of Facts were true. The Statement of Facts is
25 attached hereto as Exhibit A.

26 16. The Statement of Facts is fully incorporated herein by reference. The
27 facts stated therein are included in this complaint as though fully restated and
28 alleged herein.

D. The Fraudulent Transfers to Defendant From the Receivership Entities

17. Upon the Receiver's appointment, the Receiver promptly moved to secure control over NASI's offices, assets, and operations, including its electronic and physical records and data. Altogether, these records included 92 boxes of documents and electronic images containing a total of over 56,000 documents. Despite the large volume of records obtained, there was no way for the Receiver to identify profiting investors without expending considerable time to reconstruct financial receipts and disbursements for the Receivership Entities going back more than 15 years from the date of his appointment. The Receiver's investigation into the assets and financial affairs of the Receivership Entities was further complicated because the Receivership Entities did not keep traditional accounting systems or software, balance sheets, profit and loss statements or other financial statements, bank statements or other banking records for their accounts, or a traditional database of investor accounts. Accordingly, at the outset of his appointment and for lengthy period of time thereafter, the Receiver had no way to know of specific payments received from individual investors or payments made to individual investors as purported profits, including payments received from or made to Defendants by NASI.

18. As reliable information about NASI's financial transactions was not available, the Receiver and his staff had to devote considerable time and diligently reconstructed the company's ledger of transactions. This required the Receiver and his staff to manually source information from years of bank statements and cleared checks in order to create a schedule of checks paid by NASI to investors. On average, over 2,000 checks were paid by NASI to investors on a monthly basis in 2014. A significant amount of time was also spent by the Receiver and his staff to reconstruct banking transactions from 2005, 2006 and 2007, as financial institutions no longer kept these records since they are only required to maintain account

1 records going back seven years. Reconstruction of these years of payments to
 2 investors was not completed until the second quarter of 2015, and it was not until
 3 the fourth quarter of 2015 that the Receiver was able to complete the reconstruction
 4 of both payments received from and made to Defendants such that a determination
 5 could be made as to whether Defendants received profits in excess of their initial
 6 deposits.

7 19. Specifically, including payments to and from Defendants going back to
 8 2002, it was not until October 8, 2015 that the Receiver discovered that Defendants
 9 had received profits over and above their initial deposits. Once discovered, the
 10 Receiver promptly made a demand on Defendants for disgorgement in a letter dated
 11 the same date. Defendants did not accept the Court-approved settlement offer in the
 12 letter and the Receiver then promptly filed this action.

13 20. Attached hereto as Exhibit B is a schedule of bank transfers from
 14 Defendants to NASI and from NASI to Defendants. As the schedule reflects, the net
 15 amount received by Defendants ("Profit Amount") is calculated by subtracting
 16 (a) transfers from NASI to Defendants ("Payments from NASI") from (b) transfers
 17 from Defendants to NASI ("Deposit Amount"). Defendants' Profit Amount is
 18 \$362,010.¹

19 21. Defendants had no business dealings with NASI apart from transactions
 20 relating to the purchase and leasing of fictitious ATMs and provided no services or
 21 other value to NASI other than amounts paid for the fictitious ATMs.

22 **COUNT I – FRAUDULENT TRANSFER**

23 22. The Receiver incorporates herein each and every allegation contained
 24 in Paragraphs 1 through 21, inclusive, hereinabove set forth.

27 ¹ All transfers of Payments from NASI occurring (a) after Defendants received
 28 payments equal to the Deposit Amount, and (b) more than seven years prior to
 the date of filing this Complaint have been excluded from the calculation of the
 Profit Amount.

24. The Receivership Entities received nothing of value in exchange for the payments that comprise the Profit Amount.

7 25. At the time the payments comprising the Profit Amount were made to
8 Defendants, NASI was engaged in or about to engage in business transactions for
9 which its remaining assets were unreasonably small in relation to the business or
10 transaction.

26. NASI was insolvent, or became insolvent, shortly after the subject payments comprising the Profit Amount were made to Defendants.

13 27. NASI intended to incur, or believed or reasonably should have believed
14 it would incur, debts beyond its ability to pay as they became due.

15 28. As a consequence, the full Profit Amount is an actual and
16 constructively fraudulent transfer under California's Uniform Voidable Transactions
17 Act, Cal. Civ. Code section 3439, *et seq.*, and is subject to immediate disgorgement
18 to the Receiver.

PRAYER FOR RELIEF

20 WHEREFORE, the Receiver prays for judgment against Defendants as
21 follows:

(a) For a judgment against Defendants, jointly and severally, avoiding the transfers from NASI to Defendants comprising the Profit Amount; and

(b) For an order deeming the Profit Amount paid to Defendants to be held in constructive trust for the benefit of the Receivership Entities; and

(c) For an order directing Defendants to immediately pay the Profit Amount, plus prejudgment interest and costs, to the Receiver; and

28 (d) For such other and further relief as the Court may deem proper.

1 Dated: March 22, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
TED FATES
TIM C. HSU

By: _____ /s/ Tim C. Hsu

TIM C. HSU
Attorneys for Receiver
WILLIAM J. HOFFMAN

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